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5 Bill No. R-76-02--17

6 RESOLUTION NO. R- 08-76 .

7 A RESOLUTION authorizing the Common Council
8 of the City of Fort Wayne, Indiana to take necessary
steps to intervene in a lawsuit.

9 WHEREAS, heretofore on December 9, 1975, the Common Council
10 of the City of Fort Wayne, Indiana did pass and adopt General Ordinance No.
11 G-29-75 As Amended, which was approved and signed by the Mayor of said
City and enacted into law on December 16, 1975; and

12 WHEREAS, in accordance with Section 14 of said Ordinance there
13 was established The Fire Department Merit System Committee; and

14 WHEREAS, Section 2 of said Ordinance provides that, with the
exception of the Chief every member of the Fire Department appointed by the
15 Mayor or by the Board of Public Safety shall hold his present rank unless
and until he is demoted by said Board in compliance with the terms of said
16 Ordinance; and

17 WHEREAS, the plain intent of said Ordinance as therein
18 stated provides that a member may be demoted only for cause other than
politics; and

19 WHEREAS, the Mayor of the City of Fort Wayne, Indiana, sub-
20 sequent to January 1, 1976 has demoted members of said Fire Department with-
out cause and only for politics, and

22 WHEREAS, the laws of the State of Indiana, divide the functions
of the government of the City of Fort Wayne, Indiana into legislative
23 department (the Common Council and Executive department (the Mayor); and

24 WHEREAS, such action by the Mayor usurps the function of the
Common Council as the legislative body of the City of Fort Wayne, Indiana,
25 being in effect a repeal of said Ordinance by the Mayor; and

26 WHEREAS, it is essential to the integrity of the governmental
process that the Executive body recognize the pre-eminence of the Legislative
27 Department in its field just as the Legislative body must recognize the
pre-eminence of the Executive Department in its field; and

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WHEREAS, said Firemen have instituted an action captioned ---
Bentley et al; v. The City of Fort Wayne, which action was filed in Allen Superior
Court, Allen County, Indiana and docketed as Cause Number S-76-312 in which
cause of action the plaintiffs challenge the actions of the Executive branch of
said City government as being in disregard of a valid Ordinance of said City
namely, said General Ordinance No. G-29-75.

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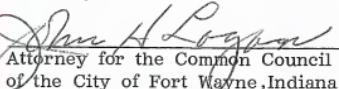
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NOW THEREFORE, BE IT RESOLVED THAT THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA take the necessary steps, to intervene
in said hereinabove mentioned law suit and as such intervenor take such steps
as are required to insure that the afore said Ordinance is enforced by the
Executive Branch of the City Government of the City of Fort Wayne, Indiana.

10 Councilman

11 Approved as to form and legality of this 9th day of
February, 1976

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13 Attorney for the Common Council
14 of the City of Fort Wayne, Indiana

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Bill No. R-76-02-17

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RESOLUTION NO. R-08-76

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of the City of Fort Wayne, Indiana did pass and adopt General Ordinance No.
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was established The Fire Department Merit System Committee; and

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exception of the Chief every member of the Fire Department appointed by the
Mayor or by the Board of Public Safety shall hold his present rank unless
and until he is demoted by said Board in compliance with the terms of said
Ordinance; and

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WHEREAS, the plain intent of said Ordinance as therein
stated provides that a member may be demoted only for cause other than
politics; and

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WHEREAS, the Mayor of the City of Fort Wayne, Indiana, sub-
sequent to January 1, 1976 has demoted members of said Fire Department with-
out cause and only for politics, and

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WHEREAS, the laws of the State of Indiana, divide the functions
of the government of the City of Fort Wayne, Indiana into Legislative
Department (the Common Council and Executive Department (the Mayor); and

WHEREAS, such action by the Mayor usurps the function of the Common Council as the Legislative Body of the City of Fort Wayne, Indiana, being in effect a repeal of said Ordinance by the Mayor; and

WHEREAS, it is essential to the integrity of the governmental process that the Executive Body recognize the pre-eminence of the Legislative Department in its field just as the Legislative Body must recognize the pre-eminence of the Executive Department in its field; and

WHEREAS, said Firemen have instituted an action captioned ---
Bentley et al; v. The City of Fort Wayne, which action was filed in Allen Superior
Court, Allen County, Indiana and docketed as Cause Number S-76-312 in which
cause of action the plaintiffs challenge the actions of the Executive Branch of
said City Government as being in disregard of a valid Ordinance of said City
namely, said General Ordinance No. G-29-75.

NOW THEREFORE, BE IT RESOLVED THAT THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA take the necessary steps to intervene
in said hereinabove mentioned law suit and as such intervenor take such steps
as are required to insure that the aforesaid Ordinance is enforced by the
Executive Branch of the City Government of the City of Fort Wayne, Indiana.

Winfield C. Moses, Jr.

Councilman

Approved as to form and legality of this 9th day of
February, 1976
John H. Logan
Attorney for the Common Council
of the City of Fort Wayne, Indiana

Read the first time in full and on motion by _____, seconded by _____, and duly adopted; read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by Moses, seconded by Hinga, and duly adopted, placed on its passage.
Passed (LOST) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>5</u>	<u>3</u>		<u>1</u>	
BURNS			<u>✓</u>		
HINGA	<u>✓</u>				
HUNTER		<u>✓</u>			
MOSES	<u>✓</u>				
NUCKOLS				<u>4</u>	
SCHMIDT, D.		<u>✓</u>			
SCHMIDT, V.	<u>✓</u>				
STIER	<u>✓</u>				
TALARICO	<u>✓</u>				

DATE: 2-10-76 CITY CLERK Charles W. Westerman

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. Q-08-76 on the 10-th day of February, 1976.

Charles W. Westerman ATTEST. James S. Stier (SEAL)

CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of February, 1976, at the hour of 11:00 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this _____ day of _____, 197_____, at the hour of _____ o'clock _____ M., E.S.T.

Vetoed by the Mayor
MAYOR

Read the first time in full and on motion by _____, seconded by _____, and duly adopted; read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197_____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by Golurus, seconded by Hinga, and duly adopted, placed on its passage. Passed ~~(lost)~~ by the following vote: 2/3 votes to override the Mayor's veto

<u>Veto</u>	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>TOTAL VOTES</u>	<u>6</u>	<u>3</u>			
<u>BURNS</u>		<u>X</u>			
<u>HINGA</u>	<u>X</u>				
<u>HUNTER</u>		<u>X</u>			
<u>MOSES</u>	<u>X</u>				
<u>NUCKOLS</u>	<u>X</u>				
<u>SCHMIDT, D.</u>		<u>X</u>			
<u>SCHMIDT, V.</u>	<u>X</u>				
<u>STIER</u>	<u>X</u>				
<u>TALARICO</u>	<u>X</u>				

DATE: 2/23/76 CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. R-08-76 on the 24th day of February, 1976.

ATTEST: (SEAL)

Charles W. Ulstrom James S. Stier
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197_____, at the hour of _____ o'clock M., E.S.T.

Approved and signed by me this _____ day of _____, 197_____, at the hour of _____ o'clock M., E.S.T.

CITY CLERK MAYOR



FORT WAYNE, INDIANA 46802

office of the mayor



VETO MESSAGE

I, Robert E. Armstrong, Mayor of the City of Fort Wayne, hereby veto Resolution R-08-76 for the following reasons:

A law suit against the City has already been filed by a number of firefighters allegedly aggrieved by this Administration's adherence to state law giving the Mayor and his Board of Safety absolute and complete control over operation of the Fire Department. This Resolution, which seeks to have the City Council become a party to that law suit, is an obvious and blatant attempt to have the City pay the costs of the action against itself.

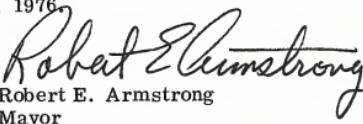
The pending action was brought by several individual firefighters, and the attendant costs should be borne by them and them alone. It is unfair to expect the taxpayers of Fort Wayne to bear the costs of a law suit filed by individuals.

The issue will be resolved without the intervention of City Council as a plaintiff and, if the members of the City Council are truly concerned about the firefighters named as plaintiffs in the aforementioned action, they will join the suit as individuals and pay their share of the costs themselves.

I maintain that it establishes unacceptable precedent to permit two branches of the same government to commence legal action against each other, particularly in view of the fact that the costs of such action are, of necessity, paid by the taxpayers.

This Administration would be totally remiss in its duty to the taxpayers if we relinquished our obligation to administer the Fire Department; but, more especially, if we allowed the taxpayers to pay the private legal expenses of individuals with public funds such action would be a misappropriation of public funds.

Signed this 18th day of February, 1976.


Robert E. Armstrong
Mayor

REA:ip



Pursuant to law I, Charles W. Westerman, Clerk of Fort Wayne, Clerk of the Common Council, on this date, February 24, 1976, presented to the members of the Common Council Bill No. R-76-02-17 --- Resolution No. R-08-76 vetoed by Robert E. Armstrong, Mayor of the City of Fort Wayne, for deliberation and action pursuant to the law by this legislative body.

Charles W. Westerman
Clerk of the City of Fort Wayne